

REMARKS

In the Action, claim 14 was rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In claim 14, applicants have defined concentration for sialic acid to be in a “range of about 0.01 mM to about 100 mM” where mM means “milliMolar,” or “ 10^{-3} Molar.” Applicants believe that to be a proper description of concentration range. Accordingly, it is requested that the §112 rejection be reconsidered and withdrawn, or if not, then it is requested that the basis for the rejection be clarified.

At pages 2-12 of the Action, claims 1-22 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims of a number of patents in which Kevin Stone is an inventor (or co-inventor with Uri Galili) in view of the cited Merck Index. Drs. Stone and Galili are co-inventors in the subject application. The applicants intend to file a Terminal Disclaimer to overcome the non-statutory obviousness double patenting rejection but have not yet done so. It is requested that this rejection be kept in abeyance under the 35 U.S.C. §103(a) rejection, discussed below, is resolved.

At pages 12-15 of the Action, claims 1-22 were rejected under 35 U.S.C. §103(a) as unpatentable over a number of patents issued to Dr. Stone in view of the cited Merck Index. As suggested by the examiner, attached is a Declaration Under 37 C.F.R. §1.31 by Applicant, Kevin R. Stone, stating that to the extent there are inventions disclosed but not claimed in the cited references, such inventions were derived from Dr. Stone, and thus are not inventions “of another.”

In view of that Declaration, there is now no proper basis for the §103(a) rejection. The Declaration has not yet been signed by Dr. Stone but is being submitted unsigned. Dr. Stone has reviewed and confirmed the content of the Declaration and will sign the Declaration shortly whereupon the signed Declaration will promptly be submitted in a Supplemental Amendment. Upon such submission, it is requested that the §103(a) rejection be reconsidered and withdrawn.

CONCLUSION

For the reasons set forth above, there is no proper basis for the §103 and §112 rejections and those rejections should be reconsidered and withdrawn. Upon or before the next Action, the Applicants expect to resolve the non-statutory obviousness-type double patenting rejections by filing an appropriate Terminal Disclaimer.

A Request for Three-Month Extension of Time is filed concurrently.

If the enclosed papers are considered incomplete, the Mail Room is respectfully requested to contact the undersigned collect at telephone (617)342-4000. The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 50-3431, Reference No. CROL-0132CPCN. Should no proper payment be enclosed herewith, as by the credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 50-3431, Reference No. CROL-0132CPCN.

Respectfully submitted,

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